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Cathryn Campbell  
McDermott, Will and Emery  
7<sup>th</sup> Floor  
4370 La Jolla Village Drive  
San Diego, CA 92122

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**JAN 21 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
Kelly, Villar, Wang, Lee, Qin	:	DECISION REFUSING STATUS
and Sem	:	UNDER 37 CFR 1.47(a)
Application No. 10/799,934	:	
Filed: March 12, 2004	:	
Attorney Docket No. 066692-0097	:	

This is in response to the petition under 37 CFR 1.47(a), filed December 30, 2004.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

On June 1, 2004, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted, requiring an executed oath or declaration, and payment of the statutory basic filing fee and a surcharge. This Notice set a two-month extendable period for reply.

On June 7, 2004, applicant filed the present petition, a request for a five-month extension of time to reply, a declaration signed by five of the six joint inventors, and paid the requisite fees.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s). The present petition does not satisfy requirement (2).

Applicant has failed to submit an oath or declaration in compliance with 37 CFR 1.63 and 1.64. The declaration is not acceptable because the alteration to the mailing addresses of Mark Kelly and Yong Qin are not **initialed and dated**.<sup>1</sup> The Manual of Patent Examining Procedure states that it is "improper for anyone, including counsel, to alter, rewrite, or partly fill in any part of the application, including the oath or declaration, after execution of the oath or declaration by the applicant." Furthermore, the Office "will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration."<sup>2</sup>

Additionally, applicant failed to indicate Min S. Lee's mailing address on the declaration. The Office notes that the oath or declaration must identify "[t]he mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor. . . ." 37 CFR 1.63(c)(1). Accordingly, to correct the deficiencies, applicant must submit an oath or declaration in compliance with 37 CFR 1.63 and 1.67, which identifies the entire inventive entity, the correct mailing address and citizenship of each inventor, and is signed by the five signing inventors on behalf of the nonsigning inventor, Mr. Lee.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Petitions Attorney**:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

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<sup>1</sup> "Any interlineation, erasure, cancellation or other alteration of the application papers...should be dated and initialed or signed by the applicant on the same sheet of paper." 37 CFR 1.52(c)(1).

<sup>2</sup> MPEP 605.04(a).

By FAX: (703) 872-9306  
Attn: Office of Petitions

By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Petitions Attorney  
Office of Petitions